

### EXAMINER'S AMENDMENT

1. This action is responsive to the Amendment filed after final on April 30, 2009, and the interview of May 21, 2009. The **Amendment of April 30, 2009 has been entered**. Claims 71-73 and 86-88 have been rejoined (see below), claims 66, 74, 81, 89, and 90 have been canceled, and claims 64-65, 67-73, 75-80, 82-88, and 91-98 have been allowed, subject to the examiner's amendment set forth below.
2. In accordance with 37 CFR 1.126, allowed claims 64-65, 67-73, 75-80, 82-88, and 91-98 will be renumbered as claims 1-30, respectively. Original claim numbering is employed in the examiner's amendment.
3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Guy Birkenmeier on May 21, 2009.

### ***Rejoinder***

4. Claims 67 and 82 are allowable. The restriction requirement requiring election of a single species of masking agent, as set forth in the Office action mailed on October 2, 2007, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is therefore withdrawn**. Claims 71-73 and 86-88, directed to nonelected species are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

***Summary of the interview of May 21, 2009***

5. The examiner contacted applicant's representative and provided a draft proposal of amendments that would overcome the remaining rejections of record. The examiner indicated that the amendments were intended to amend the claims in a manner consistent with the discussions held April 27, 2009. In particular, the examiner noted she had briefly reviewed the specification and parent applications and determined that the term "bodily sample" was broader than the term "bodily fluid" and not explicitly defined, and that claims directed to such samples would therefore require a new search and further consideration of a variety of issues. Amending the independent claims to recite a "bodily fluid" necessitates the cancellation of dependent claims 66, 74, 81, and 89-90. The examiner also did not find basis for the range of times and temperatures of "storing" set forth in claim 64. Regarding the recitation of sodium salicylate, the examiner re-reviewed the parent application of the present application (which has the same disclosure as US 6,458,546) and concluded that the preponderance of the

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evidence supports enablement of the claims. Applicant's representative consulted with applicant, and subsequently contacted the examiner to agree to the proposed amendments.

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6. **The application has been amended as follows:**

a) **Cancel** claims 66, 74, 81, 89, and 90.

b) **Amend** the claims as follows:

In claim 64, at **each of** lines 7, 8, and 14-15, delete “bodily sample” and insert therefore—bodily fluid--.

In claim 64, at lines 11-13, delete the phrase “; and storing the sample....up to about 7 days”.

In claim 67, at **each of** lines 7, 8 and 15, delete “bodily sample” and insert therefore—bodily fluid--.

In claim 79, at **each of** lines 2 and 4, delete “bodily sample” and insert therefore—bodily fluid--.

In claim 82, at **each of** lines 2 and 4, delete “bodily sample” and insert therefore—bodily fluid--.

In claim 91, at line 1, delete “claim 90” and insert therefore—claim 82--.

In claim 97, at **each of** lines 7, 8, and 19, delete “bodily sample” and insert therefore—bodily fluid--.

In claim 98, at **each of** lines 2, 9, and 19, delete “bodily sample” and insert therefore—bodily fluid--.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diana B. Johannsen whose telephone number is 571/272-0744. The examiner can normally be reached on Monday and Thursday, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Schultz can be reached at 571/272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diana B. Johannsen/  
Primary Examiner, Art Unit 1634